

REPRESENTATIVES FOR PETITIONER: Dan Capstick, Jr, Attorney-at-Law.

REPRESENTATIVES FOR RESPONDENT: Andrew P. Seiwert, Assistant Corporation Counsel, City of Indianapolis.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

AMERICAN LEGION POST #500,	)	
	)	Petition Nos.: See Attached List
Petitioner,	)	
	)	County: Marion
v.	)	
	)	Township: Wayne
MARION COUNTY PROPERTY	)	
TAX ASSESSMENT BOARD	)	Parcel Nos.: See Attached List
OF APPEALS,	)	
	)	Assessment Year: 2002
Respondent.	)	

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Appeal from the Final Determination of  
Marion County Property Tax Assessment Board of Appeals

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**March 3, 2004**

**FINAL DETERMINATION**

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Issue

1. The issue presented for consideration by the Board was:

*Whether the subject property qualifies for an exemption under Ind. Code § 6-1.1-10-25.*

### Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed six (6) Form 132s, Petitions for Review of Exemption, on behalf of American Legion Post #500 petitioning the Board to conduct an administrative review of the petitions. The Applications for Property Tax Exemption, Form 136, were filed on January 24, 2003. The determination of the PTABOA was issued on March 21, 2003. The Form 132 petitions were filed on April 17, 2003.
3. The petitions are considered timely. The subject property was 100% exempt from property tax the previous year and the County officials failed to notify the Petitioner of the lapse in exemption in accordance with Ind. Code § 6-1.1-11-5. The Respondent considered the filing of the Exemption Applications timely, as will the Board.

### Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 11, 2003 at the office of the Board before Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:

For the Petitioner: Dan Capstick, Jr., Attorney-at-Law  
Graham D. Morey, Commander  
Robert A. Flynn, 2<sup>nd</sup> Vice Commander

Mark A. Gullion, Finance Officer  
John L. Sullivan, Past Commander

For the Respondent: Andrew P. Seiwert, Assistant Corporation Counsel  
Melissa Tetrick, Exemption Deputy

6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Graham D. Morey, Commander  
Robert A. Flynn, 2<sup>nd</sup> Vice Commander  
Mark A. Gullion, Finance Officer  
John L. Sullivan, Past Commander

For the Respondent: Melissa Tetrick, Exemption Deputy

7. The following exhibits were presented:

For the Petitioner:

- 1 – Copy of Ind. Code § 6-1.1-10-25
- 2 – Not-for-Profit Tax Registration Certificate, issued by the Indiana Department of Revenue
- 3 – 1992 – 1995 Applications for Exemption
- 4 – Articles of Incorporation & Bylaws
- 5 – List of donations, including meetings held at Post for which no fee was charged
- 6 – Sales Tax Exemption, issued by Indiana Department of Revenue
- 7 – Document indicating 100% exemption for assessment year 2000
- 8 – Four statements by Members of American Legion, Post #500

For the Respondent:

- A – Copy of the Form 136 exemption application for one parcel
- B – PTABOA decision for parcel 9038906
- C – PTABOA decision for parcel 9030158
- D – PTABOA decision for parcel 9030157

E – PTABOA decision for parcel 9030156

F – PTABOA decision for parcel 9029429

G – PTABOA decision for parcel 9029450

H – Copy of *Brown v. Branch*, 758 N.E.2d 48 (Ind. 2001)

8. At the hearing, the Respondent objected to Petitioner’s Exhibits 1 – 7 because the Petitioner did not provide copies of the exhibits in accordance with the instructions on the hearing notice. The Respondent’s objection to Exhibits 1-7 is sustained. The Board did not consider Petitioner’s Exhibits 1 – 7 in this case. The Respondent objected to two (2) of the four (4) statements comprising Exhibit 8 for relevance. The Board admits all statements over the objection of the Respondent.
9. The following additional items are officially recognized as part of the record of proceedings:
  - A. Form 132, Petition for Review of Exemption
  - B. Notice of Hearing on Exemption

### **Jurisdictional Framework**

10. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.5-5-5.

### **State Review and Petitioner’s Burden**

12. The Board does not undertake to make the case for the petitioner. The Board bases its decision upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).

13. The petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E. 2d 890 (Ind. Tax 1995). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]
14. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
15. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
16. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case.’ See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

## **Constitutional and Statutory Basis for Exemption**

17. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.
  
18. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
  
19. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E. 2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

## **Basis of Exemption and Burden**

20. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1.
  
21. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996).

22. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
23. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E. 2d 708, 713; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

### **Discussion of Issue**

ISSUE: Whether the subject property qualifies for an exemption under  
Ind. Code § 6-1.1-10-25.

24. The Petitioner contends the subject property qualifies for a 100% exemption from property tax.
25. The Respondent contends the Petitioner is only entitled to a 70% exemption on the building and 30% exemption for land because that is what the Petitioner requested on the Exemption Application.
26. The applicable statute governing this Issue is:

#### **Ind. Code § 6-1.1-10-25**

(a) Subject to the limitations contained in subsection (b) of this section, tangible property is exempt from taxation if it is owned by any of the following organizations:

...

(8) A post of the American Legion

...

(b) This exemption does not apply unless the property is exclusively used, and in the case of real property actually occupied, for the purposes and objectives of the organization.

27. Evidence and testimony considered particularly relevant to the determination include:
- A. The subject property is a post of the American Legion. The subject property was granted a 100% exemption from property taxes in both 2001 and 2003. The Petitioner hired a CPA to work on tax matters and the CPA filed the Exemption Application for 2002. When the CPA filed the Exemption Applications he only requested a 70% exemption for the building and 30% exemption for the land.
  - B. The PTABOA granted this exemption and sent a notice of decision to the owners. When the owners received the decision of the PTABOA they timely filed an appeal to the Board believing they were entitled to a 100% exemption as they had been in the past.
  - C. At the hearing before the Board, the Financial Officer and the Post Commander testified that they did not know why the CPA only requested 70% exemption on the building and 30% exemption on the land.
  - D. The Respondent stated that they granted the exemption the Petitioner requested and they should not be required to “pay for the mistake” the Petitioner made.

Analysis of ISSUE

28. The subject property is a Post of the American Legion. A Post of the American Legion is entitled to a 100% exemption if the property is owned, used, and occupied for purposes and objectives of the organization. Ind. Code § 6-1.1-10-25.
29. The evidence and testimony presented indicate the subject is in fact a Post of the American Legion. There was no evidence or testimony presented that indicated any portion of the subject property is used for any other purpose or objective.

30. The Petitioner made an error in filling out the Exemption Application and requested an exemption in the amount of 70% for improvements and 30% for land. The Respondent claims they should not have to “pay for this mistake.”
31. The PTABOA responded to the Exemption Application based on the requested amount. However, the Exemption Application clearly identifies the subject property as a Post of the American Legion, and the property has been granted 100% exemption in the past. (Presumably under the authority of Ind. Code § 6-1.1-10-25.)
32. The Petitioner recognized their mistake when they received the notice of decision from the PTABOA and attempted to correct said mistake through the proper channels by appealing to this Board. Apparently, the PTABOA did not believe it appropriate to work with the Petitioner to correct this mistake and prevent the need for a hearing. Yet once this appeal was filed with this Board, the Marion County Exemption Deputy worked with the Petitioner to ensure they received a 100% exemption for 2003.
33. Respondent argues that under the doctrine of promissory estoppel, as explained in the case of *Brown v. Branch*, 758 N.E. 48 (Ind. 2001). The case cited deals with a land contract and not an exemption from property taxes and the Board does not find the doctrine of promissory estoppel to prohibit relief in this administrative exemption hearing.
34. Instead, the Respondent seems to be using a mistake to deny a full exemption to an entity clearly entitled to a full exemption. They are claiming the Petitioner made a mistake and the PTABOA should not be punished for the Petitioner’s mistake.
35. At no point did the Respondents claim the subject was being used for any other than the intended purpose. Nowhere in the exemption application did the Petitioner claim they were using the facilities in any manner not consistent with their purpose. By enacting Ind. Code § 6-1.1-10-25 the legislature clearly intended for Posts of the American Legion to be granted an exemption, unless the property was being used for some other purpose.

36. The evidence and testimony presented indicate that the subject property is a Post of the American Legion and is being used in that capacity thereby qualifying the Petitioner for exemption under Ind. Code § 6-1.1-10-25. There was no evidence presented at the hearing that indicates the property was used in any other manner. Accordingly, the subject is granted a 100% exemption for land, improvements, and personal property for tax year 2002.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

#### IMPORTANT NOTICE

##### - APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.

#### **Attachment**

Petition Nos.: 49-900-02-2-8-00001

49-900-02-2-8-00002  
49-900-02-2-8-00003  
49-900-02-2-8-00004  
49-900-02-2-8-00005  
49-900-02-2-8-00006

Parcel Nos.: 9029429  
9030156  
9029450  
9038906  
9030158 (in some instances this was identified as parcel # 903158)  
9030157